

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Joseph Montopoli, Fire Chief/EMC, 954-797-1842

PREPARED BY: Michael Malvasio, Deputy Fire Chief Administration, 954-797-1207

SUBJECT: Resolution

AFFECTED DISTRICT: All

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: AGREEMENT - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN OF DAVIE FIRE RESCUE DEPARTMENT TO ENTER INTO AN AGREEMENT WITH THE CITY OF SUNRISE FOR AUTOMATIC AND MUTUAL AID FOR FIRE RESCUE SERVICES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

REPORT IN BRIEF: The proposed Automatic and Mutual aid agreement between the Davie Fire Rescue Department and the City of Sunrise is to expand on the operational concept of mutual aid and to extend the same automatic aid for fire rescue services whereby each of the cities hereto shall automatically respond to an incident of emergency without the need for a specific request through the controlling dispatch system.

The provision of joint coverage and automatic aid will directly improve response activities in the geographic area south of Oakland Park Blvd, east to Flamingo Road, west to Everglades (inclusive Markham Park), north side of SR 84 and west to Weston Road, south of SR 84 and north of SW 14th Street. In Davie, the geographic areas are South of SR 84, North of SW 14th Street, West of 130th Ave, East of 148th Avenue, which is attached hereto and identified as Exhibit "A"

PREVIOUS ACTIONS:

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): Motion to approve resolution

Attachment(s): Resolution, Automatic and Mutual Aid Agreement

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN OF DAVIE FIRE RESCUE DEPARTMENT TO ENTER INTO AN AGREEMENT WITH THE CITY OF SUNRISE FOR AUTOMATIC AND MUTUAL AID FOR FIRE RESCUE SERVICES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 163.01, Florida Statutes, authorizes local governmental units to enter into an agreement with each other to provide fire protection and other essential services; and

WHEREAS, Davie Fire Rescue and the City of Sunrise wish to enter into an Interlocal Agreement for joint coverage, automatic and mutual aid for fire rescue services; and

WHEREAS, Davie Fire Rescue and the City of Sunrise have deemed it is mutually beneficial and in the best interest of the public to enter into this agreement for fire rescue services.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council authorizes the Mayor to enter into an automatic and mutual aid agreement with the City of Sunrise deemed an evergreen agreement and renewed by mutual agreement of the parties. Contract extensions, if appropriate, will be handled administratively by staff subject to budgetary approval by Town Council.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2009

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2009

AGREEMENT
BY AND BETWEEN
CITY OF SUNRISE
AND
TOWN OF DAVIE
PROVIDING FOR
AUTOMATIC AND MUTUAL AID OF FIRE RESCUE SERVICES

This Agreement is made and entered this ____ day of _____, 2009 by and between: the CITY OF SUNRISE, a municipal corporation of the State of Florida (hereinafter called "SUNRISE") and the Town of Davie, a municipal corporation of the State of Florida (hereinafter called "DAVIE").

ARTICLE 1
BACKGROUND; PURPOSE AND INTENT AND DEFINITIONS

- 1.1 It is the purpose and intent of this agreement for SUNRISE and DAVIE, pursuant to Section 163.01, Florida Statutes, to cooperate and provide for a means by which each governmental entity may exercise its respective powers, privileges and authorities which they share in common and which each might exercise separately in order to further a common goal.
- 1.2 The respective elected bodies of SUNRISE and DAVIE find that mutual cooperation in the delivery of fire rescue services can best be accomplished within a cooperative, interlocal configuration. To further that cause, both parties willingly enter into this cooperative Agreement, which extends beyond the concept of mutual aid for fire and rescue services.
- 1.3 For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions set forth below are assumed to be true and correct and are agreed upon by the parties.
 - 1.3.1 Automatic Aid Coverage: means the temporary assignment of one (1) Pumper staffed with three (3) State Certified Firefighters or One (1) Rescue staffed with a minimum of two firefighter/paramedics to provide fire rescue services in a different Primary Response Zone from the Primary Response Zone in which the apparatus and personnel are normally assigned. Such temporary assignment will generally be incorporated into the respective jurisdictions computer-aided

dispatch (CAD) system. Automatic aid will be used for the specific response types defined in Article 2.

- 1.3.2 Incident Command: means the first arriving unit will assume initial Incident Command, in accordance with the current Fire Chief's Association of Broward County Incident Command Procedure, until arrival of a Primary Jurisdiction Response Unit, at which time the Primary Jurisdiction Unit may assume Incident Command at its sole discretion.
 - 1.3.3 Mutual Aid: means at the time of fire, rescue, emergency or disaster, the Primary Response Zone Units may have firefighting, rescue, emergency or disaster relief related demands made upon its equipment and/or personnel, greater than the capacity of the equipment and/or personnel available within its own department, thereby requiring assistance from another agency. When local resources are determined to be inadequate to respond to the fire, rescue, emergency or disaster the Incident Commander will request assistance through Broward County MARS (Mutual Aid Request System).
 - 1.3.4 Primary Response Zone: means a specific geographic area in which fire and/or rescue services are provided, which area does not require the relocation of apparatus and personnel by a single resource. The Primary Response Zones for each party are outlined in Exhibit A.
 - 1.3.5 Responding Party: means the agency which is providing assistance to another agency which has declared an emergency incident.
 - 1.3.6 Requesting Party: means the agency which is requesting assistance from an outside agency to assist in mitigating an emergency incident.
- 1.4 For purposes of this Agreement, the Primary Response Zones to be covered, or response types responded to by the parties may be amended during the term of this agreement through mutual agreement in writing by the Fire Chiefs of SUNRISE and DAVIE. Such changes will be designed to improve response times or otherwise increase the efficiency of services provided pursuant to this Agreement.
- 1.5 Both parties agree to review service response demands on a bi-annual basis. The parties agree that the Fire Chiefs of SUNRISE and DAVIE will make adjustments in response area and / or response types to limit any unnecessary demand on either party. The number of requests for automatic aid demand would normally approximate 24 incidents per annual basis.

ARTICLE 2
COVERAGE COMMITMENT

2.1 **Mutual Aid:** Upon request, the parties agree to provide mutual aid coverage to each other unless otherwise unavailable.

2.1.1 **Terms and Procedures:**

- A A participating agency will answer for mutual aid only to the extent that the available personnel and equipment are not required for adequate protection of that agency's jurisdiction. The Chief of the agency, or designee, shall have the sole authority to determine the amount of personnel and equipment, if any, available for cooperative assistance.
- B A request for mutual aid shall be made by the Chief of the agency, or designee.
- C Whenever the employees of one party to this agreement are rendering aid to the other party pursuant to the authority contained in this agreement, such employees shall have the same powers, duties, rights and immunities as if they were taking action within their employing jurisdiction.

2.2 **Automatic Aid:** The parties agree to provide automatic aid coverage, as defined in Section 1.3.1.

2.2.1 **Automatic Aid, Response Types.** Automatic Aid Coverage, as defined in Section 1.3.1, shall be activated for the following emergency incidents:

- A Residential or Commercial Structure Fire
- B Building Collapse
- C High Priority Medical Calls
- D Any significant incident as determined by the on duty Chief Officer

ARTICLE 3
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

SUNRISE and DAVIE shall be responsible for complying with all federal, state and local laws, rules, regulations, and codes including, but not limited to, the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing regulations. SUNRISE and DAVIE shall comply with the provisions stated in the Business Associates Addendum, which is attached hereto as Exhibit "C."

ARTICLE 4
LIABILITY

- 4.1 The parties shall defend any action or proceeding brought against its respective agency arising in connection with this agreement and shall be responsible for all its own costs, attorneys fees, expenses and liabilities incurred as a result of any such claims, demands, suits, actions, damages and causes of action, including the investigation or the defense thereof, and from and against any orders, judgments or decrees which may be entered as a result thereof.
- 4.2 Each party is entitled to the privileges and protections of sovereign immunity pursuant to Section 768.28, Fla. Stat., and subject to the limitations of that provision shall bear its own responsibility and be liable for any claims, demands, suits, actions, damages and causes or actions arising out of or occurring during travel to or from its own emergency or disaster site or to or from an emergency or disaster site covered by this Agreement, and no indemnification or hold harmless agreement shall be in effect concerning such claims, demands, suits, actions, damages and causes of action.
- 4.3 Neither party hereto shall be deemed to have waived its sovereign immunity by entering into this Agreement.
- 4.4 For purposes of this Article, any use of the words "individually, separate, and each" are intended to refer to each agency's independent responsibilities and shall not be construed, in any manner, to impose personal liability upon SUNRISE and DAVIE commissioners, or any other individual.

ARTICLE 5
TERMINATION

- 5.1 This Agreement may be terminated upon sixty (60) days written notice given by either party as provided in Section 8.6 herein.
- 5.2 This Agreement shall be deemed automatically terminated and of no further force and effect if either Party has filed or consented to the filing of a petition for reorganization or bankruptcy or is otherwise adjudicated insolvent.

ARTICLE 6
DEFAULT

If either party fails to perform or observe any of the material terms and conditions of this Agreement for a period of ten (10) days after receipt of written notice of such default from the other party, the party giving notice of default shall be entitled, at its option, but is not required, to terminate this Agreement. Failure of any party to exercise its rights in the event of any breach by the other party shall not constitute a waiver of such rights. No party shall be deemed to have waived any failure to perform by the other party unless such waiver is in writing and signed by the waiving party. Such waiver shall be limited to the terms specifically contained therein. This paragraph shall be without

prejudice to the rights of any party to seek a legal remedy for any breach of the other party as may be available to it in law or equity.

ARTICLE 7 **TERM OF AGREEMENT**

- 7.1 The obligation to perform under this Agreement shall commence as of the date in which the last party executes this agreement.
- 7.2 Unless terminated earlier as provided for hereinabove, the term of this Agreement shall be from the date of commencement as provided for in paragraph 7.1 above. Thereafter, this Agreement shall be automatically renewed for one-year terms, unless either party notifies the other in writing, not later than sixty (60) days prior to the expiration of this Agreement or any renewal term of this Agreement, of its intent not to renew.
- 7.3 In the event either Party enters into joint powers, consolidated service area, or interlocal agreement which includes additional parties that agreement may supersede and provide for termination of this Agreement.

ARTICLE 8 **MISCELLANEOUS**

- 8.1 Joint Participation: The preparation of this Agreement has been a joint effort of the parties hereto, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 8.2 Entire Agreement and Modification: This Agreement incorporates, supersedes and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matter contained herein. No change, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document signed by SUNRISE and DAVIE.
- 8.3 Records: Each party shall permit the other party to examine all records pertinent to this Agreement and grants to the other party, the right to audit any books, documents and papers related to this Agreement that are generated during the term of this Agreement. The parties shall maintain the records, books, documents and papers associated with this Agreement in accordance with the records retention schedules outlined in the Florida Statutes for said records.
- 8.4 Agreement Administration: In the administration of this agreement as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Fire Chiefs, or designees, of SUNRISE and DAVIE.
- 8.5 Recordation/Filing: With the Office of the County Administrator of Broward County, Florida, as required by Section 163.01(11), Florida Statutes.
- 8.6 Notices: Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for filing of

notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following at the respective places for giving notice.

FOR THE CITY OF SUNRISE

City Manager
City of Sunrise
10770 West Oakland Park Blvd
Sunrise, Florida 33351

FOR THE TOWN OF DAVIE

Town Manager
Town of Davie
6591 Orange Drive
Davie, Florida 33314

- 8.7 Automatic Aid Agreements: Both parties acknowledge that any current automatic aid agreements with any other agency will continue in full force and effect notwithstanding execution and implementation of this Agreement.
- 8.8 Third Party Beneficiaries: Neither Party intends to directly or substantially benefit a third party by this Agreement. Therefore, there are no third party beneficiaries to this Agreement, and no third party will be entitled to assert a claim against either party based upon this Agreement.
- 8.9 Assignment: Neither this Agreement nor any interest herein shall be assigned, transferred or encumbered by either party without the written consent of the other party.
- 8.10 Waiver of Breach and Materiality: Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.
- 8.11 Compliance with Laws: Both parties shall comply with all federal, state, and local laws, codes, ordinances, rules and regulations in performing their respective duties, responsibilities, and obligations related to this Agreement.
- 8.12 Severance: In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless either party elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made and written notice shall be provided to the other party within thirty (30) days after the finding by the court becomes final.

- 8.13 **Applicable Law and Venue:** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Agreement shall be in Broward County, Florida. Both parties hereby agree to waive a jury trial, and will proceed to a trial by judge, if necessary. Should the parties be involved in legal action arising under, or connected to, this Agreement, each party will be responsible for their own attorney's fees and costs.
- 8.14 **Multiple Originals:** Multiple copies of this Agreement may be fully executed by all parties, each of which shall be deemed to be an original.
- 8.15 **C.O.N.:** Both parties shall maintain, throughout the term of this Agreement, an ALS Rescue Certificate of Public Convenience and Necessity ("C.O.N.") from Broward County and an appropriate State of Florida license enabling each to provide advanced life support services, as well as, basic life support services, to patients upon arrival at emergency scenes requiring immediate emergency medical care.
- 8.16 **Medical Director:** Both parties presently have and shall maintain, throughout the term of this Agreement and any renewal term, a Medical Director as required by Chapter 401, Florida Statutes.

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INTERLOCAL AGREEMENT BETWEEN THE CITY OF SUNRISE AND THE TOWN OF DAVIE, PROVIDING FOR AUTOMATIC AND MUTUAL AID OF FIRE RESCUE SERVICES WITH THE CITY OF SUNRISE.

CITY

ATTEST:

CITY OF SUNRISE

By: _____
Felicia M. Bravo, CMC
City Clerk

By: _____
Mayor Roger B. Wishner
____ day of _____, 2009

APPROVED AS TO FORM:

Stuart R. Michelson, City Attorney

INTERLOCAL AGREEMENT BETWEEN THE CITY OF SUNRISE AND THE TOWN OF DAVIE, PROVIDING FOR AUTOMATIC AND MUTUAL AID OF FIRE RESCUE SERVICES WITH THE CITY OF SUNRISE.

TOWN

ATTEST:

TOWN OF DAVIE

By: _____
Russell Muniz, CMC
Town Clerk

By: _____
Mayor Judy Paul
____ day of _____, 2009

APPROVED AS TO FORM:

Town Attorney

Exhibit A

INTERLOCAL AGREEMENT BETWEEN THE CITY OF SUNRISE AND THE TOWN OF DAVIE PROVIDING FOR AUTOMATIC AND MUTUAL AID OF FIRE RESCUE SERVICES WITH THE CITY OF SUNRISE.

GEOGRAPHIC AREAS

- SUNRISE:** Within the corporate limits of the City of Sunrise, south of Oakland Park Blvd, east to Flamingo Road, west to the Everglades (inclusive of Markham Park) north side of SR 84 and west to Weston Road, south of SR 84 and north of SW 14 Street.
- DAVIE:** Within the corporate limits of the Town of Davie, South of SR 84, North of SW 14th Street, West of 130th Ave, East of 148th Avenue.

These boundaries are graphically displayed on the map attached as Exhibit B.

EXHIBIT B

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF SUNRISE AND THE TOWN OF
DAVIE PROVIDING FOR AUTOMATIC AND MUTUAL AID OF FIRE RESCUE SERVICES.**

EXHIBIT C

**INTERLOCAL AGREEMENT BETWEEN CITY OF SUNRISE AND THE TOWN OF DAVIE
PROVIDING FOR AUTOMATIC AND MUTUAL AID OF FIRE RESCUE SERVICES WITH THE
CITY OF SUNRISE.**

BUSINESS ASSOCIATE ADDENDUM

BETWEEN

CITY OF SUNRISE

AND

TOWN OF DAVIE

FOR

THE DELIVERY OF AUTOMATIC AND MUTUAL AID FIRE SERVICE

This BUSINESS ASSOCIATE ADDENDUM references the following Agreement by and between the City of Sunrise, a municipal corporation organized and existing under the laws of the State of Florida, and the Town of Davie, a municipal corporation organized and existing under the law of the State of Florida (hereinafter each is referred to as "Business Associates").

WHEREAS, the parties entered into an Agreement providing for Business Associates to provide automatic aid coverage to each other; and

WHEREAS, the operation of such programs is subject to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA); and

WHEREAS, the requirements of HIPAA mandate that certain responsibilities of contractors with access to Protected Health Information as defined under HIPAA must be documented through a written agreement; and

WHEREAS, the BUSINESS ASSOCIATES desire to comply with the requirements of HIPAA and acknowledge respective responsibilities; and

WHEREAS, in conjunction with the Automatic and Mutual Aid Agreement, this BUSINESS ASSOCIATE Addendum is made and entered into by and between the BUSINESS ASSOCIATES; NOW, THEREFORE,

The parties enter into this BUSINESS ASSOCIATE Addendum for the consideration set out below, all of which is deemed to be good and sufficient consideration in order to make this BUSINESS ASSOCIATE Addendum a binding legal instrument.

Definitions:

All terms used in this Addendum not otherwise defined shall have the meaning as those terms in 45 CFR § 164 [hereinafter called, the "HIPAA Privacy Rule"].

Obligations and Activities of the Business Associates

BUSINESS ASSOCIATES agree to not use or disclose Protected Health Information other than as permitted or required by this special agreement or as required by law.

BUSINESS ASSOCIATES agree to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as permitted or required by this Addendum or as required by law.

BUSINESS ASSOCIATES agree to mitigate, to the extent possible, any harmful effect that is known to BUSINESS ASSOCIATE of a use or disclosure of Protected Health Information by BUSINESS ASSOCIATE in violation of the requirements of this Addendum.

BUSINESS ASSOCIATES agree to report to the other party any use or disclosure of the Protected Health Information not provided for by this Addendum of which it becomes aware.

BUSINESS ASSOCIATES agree to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from the other party or created or received on behalf of the other party by the BUSINESS ASSOCIATE, agrees to the same restrictions and conditions that apply through this Addendum to the BUSINESS ASSOCIATE with respect to such information.

BUSINESS ASSOCIATES agree to provide access to the other party to all Protected Health Information in Designated Record Sets in a timely manner in order to meet the requirements under 45 CFR § 164.524.

BUSINESS ASSOCIATES agree to make any amendments to Protected Health Information in a Designated Record Set as directed or agreed to by the other party pursuant to 45 CFR § 164.526 in a timely manner.

BUSINESS ASSOCIATES agree to make internal practices, books and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from the other party or created or received on behalf of the other party available to the other party or to the Secretary of Health and Human Services or his designee within five (5) business days for the purposes of determining the BUSINESS ASSOCIATE'S compliance with the Privacy Rule.

BUSINESS ASSOCIATES agree to document such disclosures of Protected Health Information and information related to such disclosures as would be required for the other party to respond to an individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

BUSINESS ASSOCIATES agree to provide the other party, or an individual under procedures approved by the other party, information and documentation collected in accordance with the preceding paragraph to respond to an individual requesting an accounting for disclosures as provided under 45 CFR § 164.528.

BUSINESS ASSOCIATES agree that, to the extent feasible, upon expiration or termination of the Existing Contract for any reason, BUSINESS ASSOCIATE shall return or destroy and retain no copies of all Protected Health Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the other party. If return or destruction of such information is not feasible, BUSINESS ASSOCIATE shall continue to limit the use or disclosure of such information as set forth in this Agreement as if the Agreement had not been terminated. This provision should be read in harmony with Section 13.2 of the Existing Contract, entitled "Retention of Records for Audit and Public Records Purposes," so that records are retained for whichever retention period is longer. This provision shall survive the expiration or earlier termination of the Existing Contract(s).

Permitted Uses and Disclosures

Except as otherwise limited in this Addendum, BUSINESS ASSOCIATE may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the other party as specified in the Existing Contract, provided that such use or disclosure would not violate the Privacy Rule if done by the other party or the minimum necessary policies and procedures of the other party that are communicated to the BUSINESS ASSOCIATE in writing.

Except as otherwise limited in this Addendum, BUSINESS ASSOCIATE may use Protected Health Information for the proper management and administration of the BUSINESS ASSOCIATE or to carry out the legal responsibilities of the BUSINESS ASSOCIATE.

Except as otherwise limited in this Addendum, BUSINESS ASSOCIATE may use Protected Health Information to provide Data Aggregation services to the other party as permitted by 42 CFR § 164.504 (e)(2)(i)(B).

BUSINESS ASSOCIATE may use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 42 CFR § 164.504 (j)(1).

Obligations of Each Party

BUSINESS ASSOCIATE shall notify the other party of any limitations in its notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect BUSINESS ASSOCIATE'S use of Protected Health Information.

BUSINESS ASSOCIATE shall notify the other party of any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such changes may affect BUSINESS ASSOCIATE'S use of Protected Health Information.

BUSINESS ASSOCIATE shall notify the other party of any restriction to the use or disclosure of Protected Health Information to which the other party has agreed in accordance with 45 CFR § 164.522, to the extent that such changes may affect BUSINESS ASSOCIATE'S use of Protected Health Information.

BUSINESS ASSOCIATE shall not request the other party to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the other party.

Amendment. The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for the other party to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Public Law no. 104-191.